

United States District Court  
Southern District of Texas  
FILED

AUG 09 2006

Michael N. Milby  
Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

LUIS ALEJANDRO GARZA

VS.

THE UNITED STATES OF  
AMERICA

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§  
§

CIVIL ACTION NO. B-02-154  
FEDERAL TORT CLAIMS ACT

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**PLAINTIFF'S MOTION FOR RECONSIDERATION OF PLAINTIFF'S  
SECOND MOTION TO COMPEL DISCOVERY AND MOTION FOR  
IN-CAMERA INSPECTION**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LUIS ALEJANDRO GARZA, Plaintiff in the above-entitled and numbered cause, and files Plaintiff's Motion for Reconsideration of Plaintiff's Second Motion to Compel Discovery and Motion for In-Camera Inspection, and in support thereof would respectfully show as follows:

**1.**

The court by ordered dated July 21, 2006 summarily denied plaintiff's second motion to compel discovery and motion for in-camera inspection by literally reiterating the language in its order denying plaintiff's first motion to compel save for the last paragraph where, without explanation, it denies plaintiff the relief requested in his second motion to compel.

**2.**

Plaintiff understands that the court of appeals has restricted the issues in this case to whether guard Debra Romero was patrolling the recreation yard in the hour or so before Plaintiff was assaulted. With this understanding, the government has possessed videotape of this respective area during the relevant time. The government has refused to produce this video footage which would itself answer the question of whether Romero patrolled the yard as required under her specific post orders.

**3.**

Plaintiff requests that the court conduct a hearing so that the government can provide its explanation as to why its not producing this videotape and what efforts it has made to locate this videotape or the photographs or still videos which may have come out of the videotape, particularly in the prosecution of the assailants for the assault which resulted in convictions at the Corpus Christi Division of the Southern District of Texas.

**4.**

Plaintiff has also asked for relevant content of the U. S. Attorney's file in the prosecution of these assailants as the file may well contain photographs and statements of persons with knowledge of relevant facts as to whether Romero was patrolling the yard, as required by specific post orders.

5.

Plaintiff submits that the court's refusal to allow him reasonable discovery of critical information is a denial of due process. The court's rulings at this time leave the government to decide for itself what information it will produce for plaintiff.

WHEREFORE, Plaintiff prays that the court reconsider his second motion to compel discovery and request for in-camera inspection and provide him a hearing on the issues contained therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry R. Benton", written over a horizontal line.

Barry R. Benton  
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State Bar No. 02176500

**ATTORNEY IN CHARGE FOR  
PLAINTIFF, LUIS ALEJANDRO GARZA**

**CERTIFICATE OF SERVICE**

I DO HEREBY CERTIFY that a true and correct copy of the above and foregoing **Plaintiff's Motion for Reconsideration of Plaintiff's Second Motion to Compel Discovery and Motion for In-Camera Inspection** has been hand-delivered to attorney of record, to wit:

**Via Hand Delivery**

Ms. Nancy L. Masso  
Assistant United States Attorney  
600 E. Harrison Street, #201  
Brownsville, Texas 78520

on this 24<sup>th</sup> day of August, 2006.

  
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BARRY R. BENTON